

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that Carrier violated provisions of agreement dated Chicago, September 3, 1947, by and between the participating Carriers, one of which was the St. Louis-San Francisco Railway Company, represented by the Carriers' Conference Committee, and its Employees, represented by the Brotherhood of Railway Clerks:

1. When on May 1, 1948, Carrier unilaterally reduced the rate of pay of \$315 per month established by application of agreement dated Chicago, Sept. 3, 1947, for position of Secretary to Superintendent Motive Power, Springfield, Missouri, to \$300 per month without complying with Section 3 of aforesaid agreement.

2. That the Carrier now be required to restore the \$315 per month rate of pay retroactive to May 1, 1948, or date it was unilaterally reduced to \$300 per month and compensate such of its employees who occupied this position for the difference between what they were paid on basis of \$300 per month and what they should have been paid on basis of \$315 per month from May 1, 1948 to date the agreement rate of \$315 per month is restored and made effective.

EMPLOYEES' STATEMENT OF FACTS: Effective May 1, 1948, Carrier created and established position of Chief Mechanical Officer with headquarters at Springfield, Missouri, and to afford this officer required secretarial assistance, the Management requested our concurrence to adding to the roster of positions listed in Rule 1 under caption "Exceptions", Section (a) of the current agreement, effective January 1, 1946, position of Secretary, Chief Mechanical Officer. We agreed to the Management's request, thus establishing by agreement the following positions of Secretary for the Carrier's Chief Mechanical Officer, Superintendent and Assistant Superintendents Motive Power, at Springfield, Missouri:

Secretary, Chief Mechanical Officer
Secretary, Superintendent Motive Power
Secretary, (2) Assistant Superintendents Motive Power

This is one additional position compared to those in effect prior to May 1, 1948, which were:

Secretary, Superintendent Motive Power
Secretary, (2) Assistant Superintendents Motive Power

the position of Secretary to Superintendent Motive Power in effect prior to that date.

A prerequisite to the proper control and handling of employees occupying positions covered by exception (a) to Rule 1 necessitates the carrier being permitted to exercise some discrimination as to rates of pay. In Award 3916 following paragraph appears in the Opinion of Board:

"The fact that the rates of pay of some of these were not controlled by any rule and the further fact that after establishment of the proper rate of pay for some of them pursuant to the two Agreements the Organizations may lose control of rates could not have had the effect to preventing the Organizations of which they are a part from petitioning for and securing for them increased rates of pay over those then or previously obtaining."

This bears out the position of the Carrier that having complied with agreements concerning making increases in rates of pay does not in itself prevent the Carrier from making any subsequent adjustments in rates of pay of such positions.

As above indicated, the employees are not alleging any violation of the current agreement covering hours of service and working conditions. It cannot be denied only Rules 1, 25, 66 and 78 apply to the occupants of such positions, yet what the employees are in effect asking is that Rule 60 of the Agreement be applied to these excepted (a) positions. This Rule 60 reads:

"Established positions shall not be discontinued and new ones created under the same or different titles covering relatively the same class of work serving the purpose of reducing the rate of pay or evading the application of these rules."

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to May 1, 1948, the following secretarial positions were in existence at Springfield, Missouri, in the office here involved: Secretary, Superintendent Motive Power, and two secretaries to two Assistant Superintendents Motive Power. During this period, the Superintendent Motive Power was the highest ranking officer with which we are here concerned. On May 1, 1948, the Carrier reorganized its mechanical department and created the position of Chief Mechanical Officer which it made superior to the position of Superintendent Motive Power. The latter position was retained with some of its former duties assigned to the Chief Mechanical Officer. Prior to May 1, 1948, the Secretary to the Superintendent Motive Power, a partially excepted position, was rated at \$315.00 per month. The occupant of this position was assigned to the position of Secretary to the Chief Mechanical Officer at \$315.00 per month when that position was created. By negotiation, the position of Secretary to Chief Mechanical Officer was excepted from certain rules including those covering wages and rates of pay. When the Carrier filled the position of Secretary to Superintendent Motive Power, it fixed the monthly salary of the position at \$300.00 per month. It is the contention of the Organization that this constitutes a reduction in salary of the position of Secretary to Superintendent Motive Power contrary to the wage increase agreements of 1946 and 1947.

The wage increase agreement effective September 1, 1947, provides in part:

"This agreement is in settlement of the dispute growing out of the notices served by the employees parties hereto on or about March 25, 1947, and shall be construed as a separate agreement by and on behalf of each carrier party hereto and its employees represented by the labor organizations described above; and shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended."

It is the contention of the Organization that the language "and shall remain in effect until changed or modified in accordance with the provisions of

the Railway Labor Act, as amended", has the effect of freezing the wage rate of positions within the wage increase agreement and, consequently, not subject to change by the Carrier except by negotiation even though they be excepted from the rules of the effective collective agreement governing rates of pay. The position here involved is within the scope of the Clerks' agreement and consequently is subject to the provisions of the wage increase agreements. Award 3916.

The relation of the wage increase agreement to the pertinent provisions of the collective agreement therefore becomes of controlling interest. We think the quoted provision of the wage increase agreement means that the increase in wages therein provided for is to be maintained until changed by negotiation. This in turn means that a reduction in the increased rate of the position is prohibited when made for the purpose of defeating the wage increase. Therefore, where the duties and responsibilities of a position remain substantially the same, the rate resulting from the wage increase agreements must be maintained.

On the other hand, if the duties and responsibilities of a position are materially reduced, the Carrier may upon proof of that fact, justify a reduction of the rate of the position. The record here discloses that after the department reorganization hereinbefore mentioned was made, the position of Secretary to the Chief Mechanical Officer became the most important secretarial position. This, in part, because it took over some of the important duties of the former position of Secretary to the Superintendent Motive Power, a fact which is established by the record. The position of Secretary to the Superintendent Motive Power sustained a substantial reduction of duties and responsibility after the reorganization took place. This justifies a reduction of salary. We think the reduction of \$15.00 per month was reasonable and fair, and could be properly made because of the position being excepted from the rules of the current agreement affecting rates of pay. This conclusion necessarily induces a further finding that the reduction was not made for the purpose of defeating the wage increases resulting from the wage increase agreements alleged here to have been violated. The Carrier therefore acted within the intent and meaning of the current agreement and the wage increase agreement when the relation of the one to the other is properly considered. The wage increase agreements purport to maintain the increases provided for, but they do not purport to restrict the power of the management to make salary adjustments based upon changes in the duties and responsibilities of positions where such action is not restricted by applicable provisions of the collective agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of July, 1949.